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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

DUANE ROBERT GREENE, SHAWN
RANDALL THOMAS, JAMES
HIRTZEL, ANTHONY SWETALA, and
SPRAGUE SIMONDS on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

FIVE PAWNS, INC.,

Defendant.

Case No. 8:15-cv-01859-DOC-DFM

**PLAINTIFFS' NOTICE OF
RECENT AUTHORITY
REGARDING PENDING
MOTION TO
DISMISS**

Date: March 21, 2016

Time: 8:30 a.m.

Courtroom: 9D

Judge: Hon. David O. Carter

1 Plaintiffs herein submit the following recent authority, which is relevant to
2 their opposition to the pending motion to dismiss for the following reasons:

3 1. ***Hodsdon v. Mars, Inc.*, Case No. 15-cv-04450-RS, 2016 Dist.**
4 **LEXIS 19268, at *14-24 (N.D. Cal. Feb. 27, 2016) (“*Hodsdon*”)**
5 **(attached hereto as Exhibit A).**

6 *Hodsdon*, consistent with this Court’s recent decision in *Wirth v. Mars, Inc.*,
7 No. SA CV 15-1470-DOC (KES), 2016 U.S. Dist. LEXIS 14552, at *7-17 (C.D.
8 Cal. Feb. 5, 2016), cited by Defendant in its reply brief in support of its motion to
9 dismiss,¹ interprets Ninth Circuit authority as limiting a manufacturer’s disclosure
10 obligations under the California consumer protection statutes to *safety concerns*
11 when omissions (as opposed to misrepresentations) are alleged.²

12 To avoid any confusion of the issues, Plaintiffs’ claims here are based on
13 Defendant’s failure to disclose the presence and significant safety concerns relating
14 to its products.³ *Plaintiffs do not pursue any cause of action based on*
15 *misrepresentations.*

16 In addition, *Hodsdon* held that a plaintiff satisfies Article III standing if the
17 plaintiff alleges that he would not have purchased a product or paid as much for it
18 “if he had known the truth.” *Id.* at *11 (citations omitted). “[T]he extra money
19 paid . . . is economic injury and affords the consumer standing to sue.” *Id.* at * 9
20 (citing *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1104 (9th Cir. 2013)). Defendant

21
22 ¹ ECF No. 24 at 10, 22-24 (filed March 7, 2016).

23 ² In its reply, Defendant cites *Williams v. Yamaha Motor Corp., U.S.A.*, 106
24 F. Supp. 3d 1101, 1108 (C.D. Cal. 2015), in support of a rule requiring allegations
25 of a “design defect” whenever a “safety issue” is alleged. ECF No. 24 at 23.
26 However, obviously when a misrepresentation or omission does not concern a
27 product defect, a defect need not be alleged. *Williams* relied on *Wilson v. Hewlett-*
28 *Packard Co.*, 668 F.3d 1136 (9th Cir. 2012). Both *Wilson* and *Williams* were
defect cases.

³ ECF No. 23 at 8, 17-18 (filed February 22, 2016).

1 argues that Plaintiffs have not alleged standing because there is no allegation
 2 “pertaining to the awareness of the alleged omitted information,”⁴ and, similarly,
 3 that Plaintiffs have not alleged reliance and causation with sufficient particularity.⁵
 4 However, it is alleged that Plaintiffs viewed the labeling of Defendant’s products
 5 and that they would have been aware of the information if it was disclosed and not
 6 have purchased Defendant’s products or paid as much for them.⁶ Those allegations
 7 satisfy both Article III standing and Rule 9(b) under the applicable case law.

8 **2. *Balser v. The Hain Celestial Group, Inc.*, No. 14-55074 (9th Cir.**
 9 **Feb. 22, 2016) (“*Balser*”) (memorandum) (attached hereto as**
 10 **Exhibit B).**

11 In *Balser*, the Court held that claims brought under the consumer protection
 12 statutes of California and other states⁷ were pled with sufficient particularity under
 13 the Federal Rules of Civil Procedure Rule 9(b), where the plaintiffs had identified
 14 what they claimed to be misleading (packaging on a product that falsely indicated
 15 it was “natural”) as well as their reliance and harm (the plaintiffs would not have
 16 paid the same amount for the product if they had known the truth). *Id.* at *2-3.
 17 The *Balser* Court noted that “whether a business practice is deceptive, misleading
 18 or unfair is ordinarily a question of fact to be decided by a jury,” and that even a
 19 complete ingredient list on the package or on the manufacturer’s website does not
 20 correct a misrepresentation on a product’s label as a matter of law. *Id.* at *4.

21 Here, the First Amended Complaint identifies exactly what was misleading
 22

23 ⁴ ECF No. 24 at 14.

24 ⁵ *Id.* at 16-18.

25 ⁶ ECF No. 13 at ¶¶ 26-31, 125, 134, 145-146, 158, 167.

26 ⁷ In its opinion in *Balser*, the Ninth Circuit did not identify the consumer
 27 statutes that it was addressing. The underlying complaint in *Balser* can be found
 28 on the Ninth Circuit’s docket, Case 2:13-cv-05604-R-RZ (September 30, 2013),
 Docket No. 18.

(the absence of any mention of two dangerous substances on product labeling),⁸ as well as Plaintiffs' reliance and harm (Plaintiffs viewed the packages that omitted the presence and significant health risks of DA and AP and would not have paid as much for Defendant's products or purchased them at all if the omitted information had been provided).⁹ Moreover, the disclosure of the levels of the allegedly dangerous substances on Defendants' website (many months after Defendant's testing, and with no warnings as to any dangers)¹⁰ does not serve to correct the omission as a matter of law.

DATED: March 15, 2016

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By: /s/ Rachele R. Rickert
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⁸ ECF No. 13 at ¶¶ 62, 65 (filed December 14, 2015).

⁹ *Id.* at ¶¶ 18, 112, 125, 145, 158, 167, 176.

¹⁰ *Id.* at ¶¶ 51, 70-71, 74.

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